

IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Jarrod Grieve; G. Patrick Shea; Meaghan Shea

**CASE 76D-0098-R-2022**  
76D 30132273

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

Water Right Claim 76D 30132273 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received issue remarks. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms

the historical use of water right claims and identifies issues with claims. If claims examination cannot confirm some aspect of a claim, an issue remark is added to the claim. This claim did not receive any objections or notices of intent to appear.

The Court consolidated this claim into Water Court Case 76D-0098-R-2022 on January 5, 2023. The consolidation order requested additional information to resolve certain issue remarks. The Court did not receive a response by the deadline.

### **FINDINGS OF FACT**

1. Claim 76D 30132273 appeared with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$130.00

USDA AERIAL PHOTOGRAPH NO(S). 379-26, DATED 8/10/1979, APPEARS TO INDICATE .5 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A USE RIGHT.

VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

2. The Kalispell Regional Office of the DNRC filed a memorandum on February 9, 2022 indicating that Claimants submitted sufficient payment to resolve the filing fee issue remark. DNRC indicates no further payment is needed.

3. This claim uses as its basis a May 8, 1901 Homestead Patent. This is not a filed appropriation right. Claimants indicated on the Statement of Claim that the date of first use was June 30, 1938. The Statement of Claim is signed by Claimants, who attest under penalty of perjury that the date is correct.

4. The acres irrigated and volume issue remarks appear to be based on a single aerial photograph from 1979. A small portion of that photo appears to have been examined.

5. The type of right should be described as a “use” right.

### **APPLICABLE LAW**

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.
3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.
4. A “filed” right is a water right which has been filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973. Rule 2(a)(25), W.R.C.E.R. A “use right” is an existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree. Rule 2(a)(71), W.R.C.E.R.

### **CONCLUSIONS OF LAW**

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.
2. The acreage and volume of the above-captioned claim may remain as it appears in the Preliminary Decree because the issue remarks do not overcome the prima facie status of the claim.
3. The evidence in the record and the proposed changes provide the Court with a sufficient basis to resolve and remove the/each issue remark(s) from the above-captioned claim.

### **RECOMMENDATIONS**

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct

the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Jarrold Grieve  
G. Patrick Shea  
Meaghan Shea  
2756 Indian Creek Rd  
Eureka, MT 59917

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 30132273 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:**

G PATRICK SHEA  
2756 INDIAN CREEK RD  
EUREKA, MT 59917 9108

MEAGHAN SHEA  
2756 INDIAN CREEK RD  
EUREKA, MT 59917

JARROD GRIEVE  
2756 INDIAN CREEK RD  
EUREKA, MT 59917

**Priority Date:** JUNE 30, 1938

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 10.00 GPM

**Volume:** 8.00 AC-FT

**Households:** 1

**Maximum Acres:** 4.00

**Source Name:** SPRING, UNNAMED TRIBUTARY OF KSANKA CREEK

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2NWSE	32	37N	26W	LINCOLN

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4.00		NWSW	32	37N	26W	LINCOLN

**Total:** 4.00

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**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

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